



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 6, 1993

Mr. Erik T. Dahler
Law Offices of Thomas P. Cate
P. O. Box 216
Lytle, Texas 78052

OR93-003

Dear Mr. Dahler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18122.

The Devine Public Housing Authority (the "authority"), which you represent, has received a request for information relating to the resignation of the authority's executive director. Specifically, the requestor seeks

the terms and conditions agreed upon by the board of the Devine Housing Authority pertaining to the resignation of the former Executive Director Wade DuBose . . . [including] a copy of any agreement, contract, letter of resignation or other written document which expresses those terms as stated and/or agreed to by Mr. DuBose.

You have submitted to us for review the Compromise Settlement Agreement entered into by Mr. DuBose and the authority. You claim that this document is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), and 3(a)(3) of the Open Records Act.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) excepts information from required public disclosure if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Industrial Foundation*, 540 S.W.2d at 685. "The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education." Open

Records Decision No. 447 (1986) at 4. Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Foundation. Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); see also Open Records Decision No. 441 (1986). Generally, actions associated with a person's public employment do not constitute his private affairs. See Open Records Decision No. 470 (1987). On numerous occasions, this office has held that the reasons for an employee's resignation or termination are not ordinarily excepted from required public disclosure by the doctrine of common-law privacy. See, e.g., Open Records Decision Nos. 444 (1986) (reasons for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982); 269 (1981) (documents relating to an employee's resignation may not be withheld under doctrine of common-law privacy) (section 3(a)(2)).

We have examined the document submitted to us for review. It relates to the resignation of a public employee. We conclude that it contains no information that is intimate or embarrassing. Moreover, the document is of legitimate concern to the public. Accordingly, we conclude that the requested document is not protected from required public disclosure under the doctrine of common law privacy. In addition, we find no basis to conclude that the document is protected from disclosure under constitutional privacy. We conclude, therefore, that the requested document may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act.

You also claim that the Compromise Settlement Agreement is excepted from required public disclosure by section 3(a)(3) of the Open Records Act. Section 3(a)(3) excepts

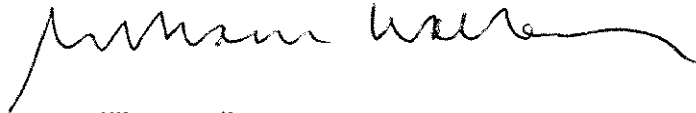
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). However, a governmental body may not withhold information under section 3(a)(3) once it has been made available to the other party in litigation. Open Records Decision Nos. 525 (1989); 454 (1986).

You advise us that litigation is pending between the authority and the former executive director regarding a claim of unemployment. The former executive director is a party to the litigation. Clearly, the Compromise Settlement Agreement has been made available to both parties in litigation. Accordingly, the Compromise Settlement Agreement may not be withheld from required public disclosure under section 3(a)(3) of the Open Records Act and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-003.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 18122
ID# 18147

cc: Ms. Linda Ann Sherrell
Medina Valley Times
P. O. Box 447
Devine, Texas 78016